

# Journal of Civil Rights and Economic Development

---

Volume 25  
Issue 1 *Volume 25, Fall 2010, Issue 1*

Article 9

---

September 2010

## Role Models: Theory, Practice, and Effectiveness among Latina Lawyers

Melinda S. Molina

Follow this and additional works at: <https://scholarship.law.stjohns.edu/jcred>



Part of the [Race and Ethnicity Commons](#)

---

### Recommended Citation

Melinda S. Molina (2010) "Role Models: Theory, Practice, and Effectiveness among Latina Lawyers," *Journal of Civil Rights and Economic Development*. Vol. 25 : Iss. 1 , Article 9.  
Available at: <https://scholarship.law.stjohns.edu/jcred/vol25/iss1/9>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Journal of Civil Rights and Economic Development by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

# **SYMPOSIA CELEBRATING THE 40TH ANNIVERSARY OF RONALD H. BROWN'S GRADUATION FROM THE SCHOOL OF LAW**

## **ROLE MODELS: THEORY, PRACTICE, AND EFFECTIVENESS AMONG LATINA LAWYERS**

**PROFESSOR MELINDA S. MOLINA**

### **INTRODUCTION**

This past year, Justice Sonia Sotomayor became the first, and sole, Hispanic appointed to the United States Supreme Court. Remarkably, Latinas—who constitute 7% of the total U.S. population<sup>1</sup> and are part of the largest and fastest-growing ethnic group—represent only 1.3% of the nation's lawyers.<sup>2</sup> Simply stated, Justice Sotomayor's story of overcoming tremendous obstacles defies the odds and remains an elusive experience for

<sup>1</sup> See Jill L. Cruz & Melinda S. Molina, *Few and Far Between: The Reality of Latina Lawyers*, 37 PEPP. L. REV. 971 (2010) (citing POPULATION DIVISION, U.S. CENSUS BUREAU, NST-EST2007-03, TABLE 3: ESTIMATES OF POPULATION CHANGE FOR THE UNITED STATES, REGIONS, STATES, AND PUERTO RICO AND REGION AND STATE RANKINGS: JULY 1, 2006 TO JULY 1, 2007 (2007), *available at* <http://www.census.gov/popest/states/tables/NST-EST2007-03.xls>); ETHNIC & HISPANIC STATISTICS BRANCH, U.S. CENSUS BUREAU, THE HISPANIC POPULATION IN THE UNITED STATES: 2006 DETAILED TABLES, *available at* <http://www.census.gov/population/www/socdemo/hispanic/cps2006.html> (2009).

<sup>2</sup> See Cruz & Molina, *supra* note 1, at 71 n.6.

Whites are 66% of the total U.S. population, with White male attorneys representing 62% and White female attorneys representing 30% of all U.S. attorneys. Latinas/os are 15% of the U.S. population, with Latinos representing 2.6% and Latinas representing 1.3% of all U.S. attorneys. Blacks represent 13.5% of the U.S. population, with Black males representing 2% and Black females representing 2.7% of all U.S. attorneys. Asians make up only 5% of the U.S. population; Asian males represent 1.3% and Asian females 1.7% of the U.S. attorney population.

*Id.* (citations omitted) (these estimates may be subject to sampling and nonsampling errors).

many Latinas.

The legal profession—despite sharing a history of race and gender-based exclusion with similar professions such as engineering, medicine, and accounting—is the least diverse.<sup>3</sup> This under-representation spans all of the major sectors of the legal profession. Latinas in law firms have one of the lowest representations of any racial or ethnic group, comprising only 1.9% and 0.4% of law firm associates and partners, respectively.<sup>4</sup> In the private sector, Latinas hold only 0.4% of general counsel positions in Fortune 500 and Fortune 501-1000 companies.<sup>5</sup> There are only four Latinas in top legal officer positions in Fortune 500 and Fortune 501-1000 companies.<sup>6</sup> In academia, only 3.5% of law school professors in the United States are Latina.<sup>7</sup>

From these statistics, it is quite clear that the proportion of Latina attorneys will not achieve parity with their relative presence in the general U.S. population in the near future.<sup>8</sup> The relative scarcity of Latina lawyers

<sup>3</sup> See generally ELIZABETH CHAMBLISS, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION (2004) (reviewing academic, professional, government and popular data sources to determine the progress of minorities in the legal profession and make suggestions to better integrate minorities into said profession).

<sup>4</sup> See Cruz & Molina, *supra* note 1, at 10 (citing Nat'l Ass'n for Law Placement, *Women and Minorities in Law Firms by Race and Ethnicity*, NALP BULL. (2009), available at <http://nalp.org/jan2009womenminorities>) (the statistic is in comparison to White, Asian, and Black women partners and associates, as information on Native American attorneys was not given)).

<sup>5</sup> See Cruz & Molina, *supra* note 1, at 10 n.9 (citing Minority Corporate Counsel Ass'n, *MCCA 2009 Survey of Fortune 500 Women General Counsel*, DIVERSITY & THE BAR, July/August 2009, available at [www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=1931](http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=1931) (discussing the number of women serving as top legal officers and general counsel in Fortune 500 and Fortune 1000 companies)).

<sup>6</sup> Cruz & Molina, *supra* note 1, at 10 n.9. In 2009, of the 85 women serving as top legal officers in Fortune 500 companies, 75 were white, 6 were African American, 2 were Latina, and 1 was Asian/Pacific Islander. The Fortune 1000 group was slightly less diverse: 68 out of the 75 women in top legal positions were white, 2 were Hispanic, 4 were African American, and 1 was Asian/Pacific Islander. *Id.*

<sup>7</sup> See *id.* at 10 n.10, 29 (citing PATI ABDULLINA, ASS'N OF AM. LAW SCHOOLS, STATISTICAL REPORT ON LAW FACULTY 2007–08 (2009), available at <http://www.aals.org/statistics/report-07-08.pdf>); Cruz & Molina, *supra* note 1, at 29 (finding that the majority of Latina study participants in academia were primarily in adjunct or untenured positions). *But cf.* Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 CHICANO-LATINO L. REV. 117, 128-29 (1994) (arguing that statistical reporting may overstate the actual number of Hispanic professors). Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 101 (2009) (citing Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 U. MO.-KAN. CITY L. REV. 293, 295 (2004) (finding that while women in general have made strides on law school faculties they tend to disproportionately hold lower-pay and lower-status positions)).

<sup>8</sup> See Elizabeth Rindskopf Parker & Sara E. Redfield, *The Educational Pipeline from Preschool to Professional School: Working to Increase Diversity in the Profession*, THE BAR EXAMINER, May 2006, at 9, available at [http://www.ncbex.org/uploads/user\\_docrepos/](http://www.ncbex.org/uploads/user_docrepos/)

is alarming in its own right, but it is even more so from the standpoint of our country's leadership, where a majority of U.S. presidents have been lawyers, more than half of our U.S. Senators, and almost half of our representatives to Congress.<sup>9</sup>

This continued under-representation has a negative impact on the ability of Latinos/as to advocate and to participate in national and local politics, and it limits access to vital legal services in Hispanic communities, which often face cultural and linguistic barriers.<sup>10</sup> Increasing the number of Latina lawyers can have a profound impact on the political and socioeconomic status of Hispanics in the United States. Their under-representation challenges our legal and business institutions to implement strategies of inclusion and retention for Latinas and all women of color.

One important challenge will be providing role models that Latina lawyers can identify with and emulate. The role model theory posits that lawyers of color will contribute to the legal profession, in part, as symbols, exemplars, and mentors.<sup>11</sup> However, the fact that there are so few Latina lawyers results in a lack of visible and successful Latina lawyer role models.

The scope of this essay is a narrow one. I will first set forth some of the underlying reasons for the under-representation of Latinas in the legal

750206\_RindskopfParker\_Redfield.pdf (discussing the challenges facing minority and economically disadvantaged students "at every key juncture" of the educational process); see also Project for Attorney Retention, Infobits, <http://www.pardc.org/infobits/> (last visited May 1, 2010) (law firms partnership ranks will not achieve parity until 2115 based on the ratio of female law school graduates to female law firm partners from 1985-2005).

<sup>9</sup> See Parker & Redfield, *supra* note 8, at 7-8 (making a similar argument with regard to all people of color in the legal profession); see also *Lawyers in the 111<sup>th</sup> Congress—House of Representatives*, 2009 A.B.A. GOV'T AFF. OFF., available at [http://www.abanet.org/poladv/documents/lawyers111congress\\_house.pdf](http://www.abanet.org/poladv/documents/lawyers111congress_house.pdf); *Lawyers in the 111<sup>th</sup> Congress—Senate*, 2009 A.B.A. GOV'T AFF. OFF., available at [http://www.abanet.org/poladv/documents/lawyers111congress\\_senate.pdf](http://www.abanet.org/poladv/documents/lawyers111congress_senate.pdf) (58% of all United States Senators and 36% of all Representatives are lawyers, combining for 40% of all Congresspersons); see also Posting of Dan Slater to Law Blog, <http://blogs.wsj.com/law/2008/11/05/barack-obama-the-uss-44th-president-and-24th-lawyer-president/trackback/> (Nov. 5, 2008, 9:16 EST) (posting that President Obama is the twenty-fifth president who is also a lawyer, but including a note explaining why the URL incorrectly calls President Obama the twenty-fourth lawyer president).

<sup>10</sup> See William Malpica & Mauricio A. Espana, *Expanding Latino Participation in the Legal Profession: Strategies for Increasing Latino Law School Enrollments*, 30 FORDHAM URB. L.J. 1393, 1395 (2003); see also *Supporting Justice II: A Report on the Pro Bono Work of America's Lawyers*, 2009 A.B.A. STANDING COMM. ON PRO BONO & PUB. SERV. 10 n.22, available at [http://www.abanet.org/media/nosearch/2008\\_report\\_pro\\_bono\\_work\\_americas\\_lawyers.pdf](http://www.abanet.org/media/nosearch/2008_report_pro_bono_work_americas_lawyers.pdf) (finding that more minority lawyers in private practice volunteered their time (90%) than did white lawyers in law firms (80%)).

<sup>11</sup> Ian Haney-Lopez, *Community Ties, Race, and Faculty Hiring: The Case for Professors Who Don't Think White*, 1 RECONSTRUCTION 46, 50-51 (1991) (describing the educational benefits to minority students and legal institutions by employing minority scholars).

profession, drawing from a national study by the Hispanic National Bar Association entitled *Few and Far Between: the Reality of Latina Lawyers*, which shines light on the under-representation of Latina lawyers.<sup>12</sup> This landmark study is the first of its kind to provide both qualitative and quantitative data on the experiences and status of Latinas in the legal profession, on a national level, and across all major legal sectors.<sup>13</sup> This essay will focus primarily on the lack of visible Latina role models with which Hispanic attorneys can identify and emulate. Drawing from existing literature, I argue that Latina role models face considerable constraints as role models. However, I conclude that role models are messengers of hope—and “you got to give them hope.”<sup>14</sup>

## I. OBSTACLES FACING LATINA ATTORNEYS

### A. Barriers to Educational/Career Attainment

The crisis in the educational pipeline, which impedes the educational attainment of Latinos/as, continues to be a significant barrier for Latinas in the legal profession. Numerous studies have documented this crisis.<sup>15</sup> Latinos historically have high dropout rates and low college completion rates.<sup>16</sup> Nearly half (48%) of Latinos ages 16 to 24 are not enrolled in either high school or college, compared with 40% of Whites, 41% of Blacks, and

<sup>12</sup> See Cruz & Molina, *supra* note 1.

<sup>13</sup> See *id.* The Study employed a mixed-method transformative design, with a combination of qualitative and quantitative data collection and analysis. It was conducted in two distinct phases: a series of focus groups across 11 U.S. cities, followed by a national survey sent to the Latina membership of the Hispanic National Bar Association (HNBA) and the HNBA's Affiliate Bar Associations (“Affiliates”). *Id.*

<sup>14</sup> Harvey Milk, Member, San Francisco Board of Supervisors, *You Cannot Live on Hope Alone* (1978), available at <http://www.causecast.org/videos/2980-got-hope-harvey-milk>.

And you’ve got to elect gay people, so that thousand upon thousands like that child know that there is hope for a better world; there is hope for a better tomorrow. Without hope, not only gays, but those who are blacks, the Asians, the disabled, the seniors, the us’s: without hope the us’s give up. I know that you can’t live on hope alone, but without it, life is not worth living. And you, and you, and you, and you have got to give them hope.

*Id.*

<sup>15</sup> See Cruz & Molina, *supra* note 1 at 46; see also RICHARD FRY, PEW HISPANIC CTR., *LATINO YOUTH FINISHING COLLEGE: THE ROLE OF SELECTIVE PATHWAYS*, 1 (2004); PEW HISPANIC CTR., *BETWEEN TWO WORLDS: HOW YOUNG LATINOS COME OF AGE IN AMERICA* 10 (2009) [hereinafter *BETWEEN TWO WORLDS*], available at <http://pewhispanic.org/files/reports/117.pdf> (“The high school dropout rate among Latino youths (17%) is nearly three times as high as it is among white youths (6%) and nearly double the rate among blacks (9%).”).

<sup>16</sup> *BETWEEN TWO WORLDS*, *supra* note 15, at 45 (“Latino schooling in the U.S. has long been characterized by high dropout rates and low college completion rates.”).

27% of Asians.<sup>17</sup> Moreover, Latinos/as enrolled in college are more likely to attend on a part-time basis<sup>18</sup> and have a greater tendency to attend less-selective and two-year colleges (versus four-year colleges).<sup>19</sup> Despite these harrowing statistics, nearly all Latino youth (89%) and adults (88%) value education highly as an important tool for advancement.<sup>20</sup> However, more than half of Latinos/as ages 18 to 25 do not expect to earn a college degree or more.<sup>21</sup>

The most salient barriers to Hispanics fulfilling their educational aspirations are both scant finances and limited educational opportunities and preparation.<sup>22</sup> These barriers result in a lower rate of law school enrollment by Hispanics (7.9% of applicants) compared with their White counterparts (65% of applicants).<sup>23</sup>

Not surprisingly, these barriers in the educational pipeline are an impediment to entering the legal profession for many Latinas. Indeed, there are only approximately 13,000 Latina lawyers nationwide.<sup>24</sup> The paucity of this number has severe repercussions for the recruitment, retention, and professional career advancement of Latina lawyers.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 46 (“Nearly one-in-four (23.7) Latino college students attend only part time, much higher than the national average of 14.7% and nearly double the rate among whites (12.4%).”); Cruz & Molina, *supra* note 1, at 46.

<sup>19</sup> See BETWEEN TWO WORLDS, *supra* note 15, at 47 n.19 (noting that “it is the case that Latino youths are more likely to attend two-year colleges and less likely to attend four-year colleges”).

<sup>20</sup> *Id.* at 10.

<sup>21</sup> *Id.* at 51 (“Some 48% of young Latinos ages 18 to 25 say they expect to get a college degree or more, compared with 60% of the overall U.S. population of non-Hispanic youths.”).

<sup>22</sup> *Id.* at 52 (finding that 74% of all 16-to-25-year-old study participants stated that they discontinued their education during or shortly after high school in order to support their family financially); Cruz & Molina, *supra* note 1, at 46.

<sup>23</sup> See Cruz & Molina, *supra* note 1, at 47 (citing *Pre-Conference Report: The Critical Need to Further Diversify the Legal Academy & The Legal Profession*, 2005 A.B.A. PRESIDENTIAL ADVISORY COUNCIL ON DIVERSITY IN THE PROF. 3, available at <http://www.abanet.org/op/pipelineconf/report.html>; see also *Public Forum: A Lasting Blueprint for Judicial Diversity* (January 18, 2007) (testimony of Professor Leonard M. Baynes, Director, The Ronald H. Brown Center for Civil Rights and Economic Development), available at <http://www.stjohns.edu/media/3/799d1cde239c48cb9dd5514161d11fba.pdf> (describing a Ronald H. Brown Center five-year longitudinal study of African-American and Latino/a enrollment at all fifteen New York State law schools that showed that African-American enrollment declined 20% and Puerto Rican enrollment declined 54% between 2000 and 2005).

<sup>24</sup> Cruz & Molina, *supra* note 1, at 10 (citing Bureau of Labor Statistics, *Current Population Survey: Unpublished Table 1: Employed and experienced unemployed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity, Annual Average 2008*, on file with author).

### *B. Barriers to Career Retention and Advancement*

In addition to the educational barriers that impede their consideration of and entry into the legal profession, the *Few and Far Between Study* found that Latina attorneys are poorly represented in leadership positions across all major legal sectors and appear to have a relatively high rate of attrition.<sup>25</sup>

The Study revealed that many of the Latina attorneys found it challenging to build professional relationships because they did not have access to role models, mentors, and informal networks.<sup>26</sup> The women attributed this lack of access to the under-representation of Latinas in the workplace.<sup>27</sup> Many of the women reported that they were the only Latina in their organization.<sup>28</sup> This often led to feelings of isolation and “otherness” because no one within their workplace mirrored their own cultural values or norms.<sup>29</sup> This lack of commonality made it difficult for many of the Latina attorneys in the study to build professional relationships because they lacked access to role models, mentors, and informal networks in their places of employment or legal communities.<sup>30</sup>

This sense of “otherness” prompted some study respondents to mask their Latina identity in order to be assimilated within the dominant culture of the legal profession.<sup>31</sup> Others attributed the lack of investment in their growth and advancement (which often result from these professional relationships) to “cultural sexism” that define Latinas as under-qualified and unable to balance the demands of career and motherhood.<sup>32</sup> The paucity of Latinas in the legal profession in the United States contributes to this sense of disinvestment and adds credence to the negative perceptions about the capabilities of Latinas and all people of color.<sup>33</sup>

<sup>25</sup> *Id.*, *supra* note 1, at 30.

<sup>26</sup> *Id.* at 43.

<sup>27</sup> *Id.* at 41.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 42, 49.

<sup>30</sup> See, e.g., Glenn C. Loury, *Discrimination in the Post-Civil Rights Era: Beyond Market Interactions*, 12 J. ECON. PERSP. 117, 119-21 (1998) (arguing that social networks, which largely determine one’s access to resources, allow past discrimination to persist over time and can have deleterious effects on skills among minorities and significantly contribute to racial inequalities).

<sup>31</sup> Cruz & Molina, *supra* note 1, at 9, 42-43.

<sup>32</sup> *Id.* at 33, 39-40.

<sup>33</sup> Haney-Lopez, *supra* note 11, at 51 (discussing minority students’ “sense of estrangement” caused by “the historic absence of minorities and women . . . in the legal profession”).

## II. ROLE MODELS

The role model theory posits that lawyers of color will contribute to the legal profession, in part, as symbols, exemplars, and mentors.<sup>34</sup> Role models serve three important functions. First, role models symbolically challenge the sense of “otherness” that Latinas and all women of color encounter.<sup>35</sup> A Latina lawyer counters this sense of otherness by conveying a positive message of acceptance and belonging within the legal profession.

Second, role models serve as “benchmarks” signifying the prototype to which we want others (or ourselves) to aspire and replicate—to “look up to.”<sup>36</sup> Finally, role models act as mentors who facilitate the professional and personal growth of Latina lawyers.<sup>37</sup>

Role models can transmit the cultural values and customs of the legal profession from one generation to the next.<sup>38</sup> The following statement, drawn from the *Few and Far Between Study*, demonstrates how Latina lawyers can be used as role models not only because they are attorneys but also because they are Latina attorneys:

Female attorneys need female mentors, and those who are mothers need mentors who are mothers. I performed much better in law school and in employment when I had a trusted mentor who understood me, my circumstances, my background, and my perspective. I was able to trust and confide in that person and ask important questions. When I lacked that resource, I didn’t ask and therefore was not informed.<sup>39</sup>

Latina lawyers who serve as role models are representative of those who have surmounted innumerable obstacles; they are not only exemplars of the

<sup>34</sup> These contributions to the legal profession have been espoused and advocated for decades. See Haney-Lopez, *supra* note 11, at 47, 51-53; see also Richard Delgado, *Essay: Affirmative Action as a Majoritarian Device: Or, Do You Really Want to be a Role Model?*, 89 MICH. L. REV. 1222, 1223 n.5 (1991). Delgado describes that role models “provide communities of color with exemplars of success, without which they might conclude that certain social roles and professional opportunities are closed to them. Role models are expected to communicate to their communities that opportunities are indeed available and that hard work and perseverance will be rewarded.” *Id.*

<sup>35</sup> See Haney-Lopez, *supra* note 11, at 50-52 (explaining the role model theory and its impact on minority students).

<sup>36</sup> Richard R. Verdugo, *Racial Stratification and the Use of Hispanic Faculty as Role Models: Theory, Policy, and Practice*, 66 J. HIGHER EDUC. 669, 678 (1995).

<sup>37</sup> See Haney-Lopez, *supra* note 11, at 51 (“The belief that minority scholars have a large role to play as mentors for their students is a third aspect of the role model theory.”).

<sup>38</sup> Verdugo, *supra* note 36, at 678 (“[R]ole models can be used to pass on system traditions, values, and culture from one generation to the next.”).

<sup>39</sup> Cruz & Molina, *supra* note 1, at 43.



benefits of becoming an attorney but also transmitters of insider institutional and cultural values and norms.<sup>40</sup> The underlying assumption regarding Latina and all role models of color is that the individuals filling these roles are able to fulfill these roles.<sup>41</sup> Latina and all role models of color operate under certain constraints that limit their ability to function as effective symbols, exemplars, and mentors of success. Ultimately, role models can, at the very least, offer hope.

### A. Symbolism

What does a Latina lawyer's success symbolize?<sup>42</sup> For some, superb job performance by a Latina lawyer symbolizes the competence of all Latinos.<sup>43</sup> However, to others, she symbolizes "the exception that proves the rule of intellectual inferiority"—and, therefore, the vast majority of "other" Latinas continue to be viewed as unqualified attorneys.<sup>44</sup> Some will further reason that a successful Latina lawyer is merely an aberration or a beneficiary of an unfair affirmative action, rather than an achievement based on her own merit. What does a Latina lawyer's failure symbolize? For many attorneys, a misstep is in large part inevitable, especially for junior attorneys, and is part of the learning and development process. However, for some Latina attorneys, that failure will symbolize not only her individual failure but that of all Latinas. She becomes the "Latina lawyer" and, more particularly, a measure of the potential—or lack thereof—of all Latinas. As a result, a role model is symbolic only of her own uncommon capabilities, not all Latinas and women of color.

Justice Sotomayor's nomination to the Supreme Court elicited a similar assessment regarding her intellectual heft and judicial temperament to serve on the nation's highest court.<sup>45</sup> Despite her well-credentialed resume (as an honors graduate of Princeton University and a Yale Law School graduate)

<sup>40</sup> See Verdugo, *supra* note 36, at 678-679.

<sup>41</sup> See *id.*

<sup>42</sup> See Haney-Lopez, *supra* note 11, at 52.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See Jeffery Rosen, *The Case Against Sotomayor: Indictments of Obama's Front-Runner to Replace Souter*, THE NEW REPUBLIC, May 4, 2009, <http://www.tnr.com/article/politics/the-case-against-sotomayor?id=45d56e6f-f497-4b19-9c63-04e10199a085> (discussing "concerns" about Sotomayor being elevated to the Supreme Court); see also Posting of Mark Hemingway to The Corner, <http://corner.nationalreview.com/post/?q=MzQzNTY4YTlmMmMxNzYwMTExOWIzNjdiMTkwYmNmNTQ=> (May 4, 2009, 13:49 EST) (commenting in response to Jeffery Rosen's article, *supra*, "She's dumb and obnoxious. Got it.").

and her extensive experience on the federal bench (on the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit<sup>46</sup>)—bringing more federal judicial experience to the Supreme Court than any justice in the past 100 years<sup>47</sup>—some will credit these accomplishments to unfair affirmative action policies. Despite her immense achievements, some will assert that she remains unqualified for the position.

What does a Latina lawyer symbolize in terms of the legal profession and motherhood? In the *Few and Far Between Study*, many study participants voiced serious concerns about balancing a legal career and motherhood. One woman explained it in this way: “It’s . . . all or nothing. I remember interviewing [at two law firms] . . . and all the women partners were women that sacrificed . . . not married, no children.”<sup>48</sup> Numerous studies document that female lawyers are strategically delaying their families or deciding not to have children in order to pursue their legal careers; for many, doing both is an unsustainable goal.<sup>49</sup> For example, in academia, which is popularly viewed as a family-oriented career path, only one in three women hired for a tenure track position before having children will become a mother.<sup>50</sup> This can be explained in part because, similar to law firms, the tenure (pre-partner) period typically occurs between the ages of twenty-seven and thirty-seven—a woman’s prime child-bearing years.<sup>51</sup> For many, the symbolism is that balancing motherhood and a career is untenable.

### B. Exemplars

The role model theory also posits that role models serve as “exemplars

<sup>46</sup> In 1998, Justice Sotomayor became the first Latina to serve on the Court of Appeals for the Second Circuit. Press Release, The White House, Background on Judge Sonia Sotomayor (May 26, 2009), [http://www.whitehouse.gov/the\\_press\\_office/Background-on-Judge-Sonia-Sotomayor/](http://www.whitehouse.gov/the_press_office/Background-on-Judge-Sonia-Sotomayor/).

<sup>47</sup> *Id.*

<sup>48</sup> Cruz & Molina, *supra* note 1, at 40.

<sup>49</sup> See generally *id.*; COUNCIL ON GENDER PARITY IN LABOR AND EDUC., N.J. STATE EMPLOYMENT & TRAINING COMM’N, LEGAL TALENT AT THE CROSSROADS: WHY NEW JERSEY WOMEN LAWYERS LEAVE THEIR LAW FIRMS, AND WHY THEY CHOOSE TO STAY (2009), available at [http://www.cww.rutgers.edu/Docs/Legal\\_Talent.pdf](http://www.cww.rutgers.edu/Docs/Legal_Talent.pdf) (discussing the difficulties women have acting as a working lawyer and as the primary caregiver for their children).

<sup>50</sup> McGinley, *supra* note 7, at 122 (citing Mary Ann Mason & Marc Goulden, *Do Babies Matter (Part II)? Closing the Baby Gap*, 90 ACADEME 10, 11 (Nov.-Dec. 2004), available at <http://www.aaup.org/AAUP/pubsres/academe/2004/ND/Feat/04ndmaso.htm>).

<sup>51</sup> See McGinley, *supra* note 7, at 120.

who inspire emulation.”<sup>52</sup> This expectation is based on the realization that Latina lawyers “implicitly legitimize” certain modes of professional behavior and norms by demonstrating how to behave, think, and act as a lawyer.<sup>53</sup> In an apparent first for the United States Supreme Court, Justice Sotomayor used the term “undocumented immigrant” in her first opinion for the court—signifying that the term is now part of the legal lexicon for the nation’s highest court.<sup>54</sup> This serves as an example that one can be a Latina lawyer and also be in touch with the aspirations, struggles, and cultural norms of the Hispanic community.<sup>55</sup> This in turn serves as an important validation of Hispanic values and norms.

However, Professors Carbado and Gulati pessimistically note that those who will be successful, at least in the corporate context, are those who are “racially palatable” or “racially salient.”<sup>56</sup> For many individuals of color, this means masking or disavowing their racial or ethnic identity in order to mirror the values and norms of the majority culture in which they operate.<sup>57</sup> One woman from the *Few and Far Between Study* commented: “I made a choice when I said nothing” and also in “not sharing aspects of myself or not rocking the boat. . .or in some extreme cases, you know, shutting up, especially if I’m being told something racist.”<sup>58</sup>

In the *Few and Far Between Study*, a large number of study participants reported that they adjusted their appearance or behavior in order to blend in or establish credibility in their places of work, because of their sense of “otherness.”<sup>59</sup> One participant poignantly commented: “It’s what you have to do to be successful at a large law firm. You have to bridge that gap and make them almost forget you’re Hispanic. . .the same way I have to make them forget I’m a mother.”<sup>60</sup> For some participants, the “price of success” seems to be conformity to conventional White norms, including manner of

<sup>52</sup> Haney-Lopez, *supra* note 11, at 51.

<sup>53</sup> See *id.* (discussing law professors and the role model theory and asserting that “professors implicitly legitimize certain types of professional conduct by their manner in class and in their relations with students.”).

<sup>54</sup> See *Mohawk Indus., v. Carpenter*, 130 S. Ct. 599, 603 (2009) (discussing the facts of the case).

<sup>55</sup> See Haney-Lopez, *supra* note 11, at 51.

<sup>56</sup> Devon W. Carbado & Mitu Gulati, *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There*, 61 WASH. & LEE L. REV. 1645, 1658 (2004) (explaining that being racially palatable or salient means that an individual is only tangentially viewed as non-White).

<sup>57</sup> *Id.* at 1658-59.

<sup>58</sup> Cruz & Molina, *supra* note, 1 at 43.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 42.

dress, mode of speech, and career pursuits.<sup>61</sup>

This conformity will sometimes translate into applying a higher level of scrutiny to Latina lawyers. One woman from the study made this comment: "When I interview another Hispanic woman, I'm also harder, because I know what it takes to be there, how much at [a] higher level she's going to have to operate."<sup>62</sup> Adopting this strategy protects the Latina lawyer from the repercussion of the other person's shortcomings, while reinforcing and internalizing negative stereotypes about the capabilities of Latinas as attorneys,<sup>63</sup> as the following comment illustrates: "[I]f she isn't going to meet the standard, is that going to reflect poorly on both of us?"<sup>64</sup> Along similar lines, this strategy provides the employer with an external rationalization regarding the treatment of Hispanic lawyers.<sup>65</sup> For example, an employer can rationalize its refusal to hire a Hispanic law firm on the grounds that a fellow Latino believed the firm was not qualified.<sup>66</sup> For the alleged role model, adopting this strategy will ally her with her superiors and colleagues because she appears to base her decisions solely on a merit-based determination rather than a perceived group alliance.<sup>67</sup> There are powerful incentives for role models to dissociate and distance themselves from other Latinas and people of color.<sup>68</sup>

For others, the ability (or inability) to dissociate is an insurmountable obstacle that depends largely on an individual's phenotype, as opposed to name or accent, which can be more easily masked. For example, many participants in the *Few and Far Between Study* who believe that they can "pass as white" recognize that they are afforded better treatment and more opportunities for advancement in the legal profession than dark-complexioned Latinas.<sup>69</sup> This need to conform undermines the very reasons for having a role model, if one must disavow or mask racial and ethnic

<sup>61</sup> See Carbado & Gulati, *supra* note 55, at 1675-1676, n. 70 (describing this phenomena as "insider-group affinity"; those who can demonstrate that they are similar to their White colleagues help negate negative stereotyping surrounding their ability to fit within corporate law firms team-oriented environments); see also Haney-Lopez, *supra* note 11, at 52.

<sup>62</sup> Cruz & Molina, *supra* note 1.

<sup>63</sup> See Carbado & Gulati, *supra* note 55, at 1680-81 (providing an example of a Latino attorney employing a similar strategy to also allay any concerns about his own institutional fit and commitment.)

<sup>64</sup> Cruz & Molina, *supra* note 1.

<sup>65</sup> See Carbado & Gulati, *supra* note 55, at 1680-81.

<sup>66</sup> See *Id.*

<sup>67</sup> See *id.*

<sup>68</sup> See *id.*

<sup>69</sup> Cruz & Molina, *supra* note 1, at 9.

identify in order to succeed.<sup>70</sup> To that end, aspiring and junior attorneys of color will find it difficult to locate a *visible* role model and mentor.

### C. Mentor

A third aspect of the role model theory is that attorneys of color will play a large role as mentors for junior attorneys of color. The importance of mentoring has been well documented in research about women of color in the legal profession.<sup>71</sup> The expectation is that a mentor will provide juniors with invaluable institutional insights and access to influential colleagues, networks, and clients. In the *Few and Far Between Study*, the overwhelming majority of participants emphasized the importance of having mentors who can provide crucial information and emotional support throughout their legal careers.<sup>72</sup>

Generally, Latinas and people of color do not have access to this kind of mentoring. Indeed, in the *Few and Far Between Study*, only a third of the Latinas surveyed believe that formal mentoring within the workplace has played a critical role in their careers.<sup>73</sup> The reasons for the lack of mentoring are varied. First, mentors often allocate limited mentorship

<sup>70</sup> There is considerable literature on people of color employing "distancing strategies" to advance their careers. See e.g., Carbado & Gulati, *supra* note 55, at 1696 n.70 (citing John F. Dovidio et al., *Reducing Contemporary Prejudice: Combating Explicit and Implicit Bias at the Individual and Intergroup Level*, in REDUCING PREJUDICE AND DISCRIMINATION 137 (Stuart Oskamp ed., 2000); Naomi Ellemers et al., *Self and Social Identity*, 53 ANN. REV. PSYCHOL. 161 (2002); Robin J. Ely, *The Effects of Organizational Demographics and Social Identity on Relationships Among Professional Women*, 39 ADMIN. SCI. Q. 203 (1994); Laurie A. Rudman, *Self-Promotion as a Risk Factor for Women: The Costs and Benefits of Counterstereotypical Impression Management*, 74 J. PERSONALITY & SOC. PSYCHOL. 629 (1998)). For example, a Latina can distance herself from other Latinos/as by emphasizing aspects of her identity that are similar to her white colleagues and deemphasizing her ethnic and gender differences. One woman from the *Few and Far Between Study* explained her job prospects in the following way: "I'm not dark complected, but I remember my dad telling me, 'they're going to hire you, and they're going to put you up front because you've got the name, but you don't offend anybody.'" Cruz & Molina, *supra* note 1.

<sup>71</sup> See Carbado & Gulati, *supra* note 55, at 1695 n.53 (citing David Thomas & Monica Higgins, *Mentoring and the Boundaryless Career: Lessons from the Minority Experience*, in THE BOUNDARYLESS CAREER: A NEW EMPLOYMENT PRINCIPLE FOR A NEW ORGANIZATIONAL ERA 268 (Michael B. Arthur & Denise M. Rousseau eds., 1996) (describing the way in which minority employees may be hindered from obtaining internal firm networks of information); Monica C. Higgins & David A. Thomas, *Constellations and Careers: Toward Understanding the Effects of Multiple Developmental Relationships*, 22 J. ORG. BEHAV. 223, 240-41 (2001) (finding that a lawyer's range of mentoring relationships is crucial in determining his or her career trajectory)).

<sup>72</sup> Cruz & Molina, *supra* note, 1 at 51.

<sup>73</sup> *Id.* at 43.

opportunities to those with whom he or she feels most comfortable.<sup>74</sup> Second, all women—and in particular women of color—have high rates of attrition.<sup>75</sup> As a result, there are few women who have the seniority (i.e. status or power) within their organizations to mentor junior attorneys.<sup>76</sup>

Although most participants in the *Few and Far Between Study* preferred Latina mentors, most recognized that this may be difficult, given the small number of Latinas lawyers.<sup>77</sup> Most believed that the most essential component of a successful mentor “is one where the mentor is invested in and will advocate for the mentee.”<sup>78</sup>

Mentoring programs continue to be lauded as an effective tool for promoting diversity in the legal profession. However, it appears that Latina role models operate under considerable constraints as mentors because of the paucity of Latina lawyers.

## CONCLUSION

Role models are often viewed as critical to the recruitment, retention, and advancement of Latinas in the legal profession by creating an entrée into key networks, both within the workplace and in key industry circles. Role models cannot on their own ameliorate the devastating effects of the leaks in the educational pipeline or the barriers Latinas face once they join the legal profession. Yet a number of researchers and diversity advocates place considerable value on role models as a way to create and sustain diversity in the legal profession.<sup>79</sup> But are we missing the point and

<sup>74</sup> See *id.*; see also Carbado & Gulati, *supra* note 55, at 1670 (citing David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 569 (1996) (arguing that black associates at corporate law firms will often have trouble establishing a “mentoring relationship partly because white mentors prefer associates who remind them of themselves.”).

<sup>75</sup> See Cruz & Molina, *supra* note 1, at 30 (a survey of participants who, in their relatively short careers of less than ten years, had, on average, two to three employers); see also PAULA A. PATTON & CYNTHIA L. SPANHEL, TOWARD EFFECTIVE MANAGEMENT OF ASSOCIATE MOBILITY: A STATUS REPORT ON ATTRITION 21 (2005) (similarly reporting that 81% of minority female associates leave their law firms by their fifth year).

<sup>76</sup> See also David B. Wilkins, *Partners Without Power? A Preliminary Look at Black Partners in Corporate Law Firms*, 2 J. INST. STUDY LEGAL ETHICS 15, 33 (1999) (suggesting that despite partner status structural impediments in law firms limit the ability of black partners to develop crucial networks and relationships).

<sup>77</sup> Cruz & Molina, *supra* note 1, at 51.

<sup>78</sup> *Id.*

<sup>79</sup> See Carbado & Gulati, *supra* note 55, at 1666 n.43 quoting Edward M. Chen, *The Judiciary, Diversity, and Justice for All*, 91 CAL. L. REV. 1109, 1116 (2003).

Diversity can establish the credibility of an institution, build bridges to other communities,

settling for something that could never fully rectify the under-representation of Latinas in the legal profession, because it is an ineffective tool?

As I write this essay, I feel a sense of betrayal to the very women and men who have encouraged me, prodded me, and helped me realize my own potential. In the end, is that the most (or the least) we can ask from our role models and mentors? Our role models act as a prototype, or simply as an example of what we can strive to achieve. Otherwise, who else will dictate the aspirations of Latinas and all women of color in the legal profession?

Forty years after Ronald H. Brown's graduation from St. John's University School of Law, followed by his tremendous accomplishments (including serving as the first African-American partner at Patton, Boggs, LLP; the first African-American Secretary of Commerce; and the first African-American Chair of the Democratic National Committee), we find that both Hispanics and African Americans are severely under-represented in the legal profession. In consideration of this fact, what do role models symbolize?

Role models symbolize hope. It is with this hope that the historic and symbolic appointment of Justice Sonia Sotomayor to our nation's highest court will inspire Latinas and all people of color to aspire and consider careers in the legal profession.

We cannot live on hope alone. Therefore, and as set forth in the *Few and Far Between Study*, both legal institutions and business leaders must critically examine their current mentoring programs to determine their effectiveness.<sup>80</sup> A candid discourse with Latinas, and all women of color, should take place to evaluate these programs and, if needed, modify them to meet the mentees' needs.<sup>81</sup> This process not only encourages accountability for the employer but can also provide opportunities for effective mentorship.<sup>82</sup> These programs and initiatives must be also be monitored regularly and consistently to ensure the successfulness of the

and increase sensitivity to and awareness of diverse clientele and constituents. This is true whether the context is a union seeking to organize in a minority or immigrant community, a business looking to expand its markets to new communities, or a social service agency seeking to serve minority or culturally isolated populations. . . . [D]iversity provides role models for those historically excluded. It can provide a source of hope and inspiration for those who would otherwise limit their horizons and aspirations.

*Id.*

<sup>80</sup> Cruz & Molina, *supra* note 1, at 51.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

programs.<sup>83</sup> Furthermore, given the scarce number of Latinas in the legal profession, “these institutions must take the necessary steps to increase the recruitment, retention, and advancement of Latina” lawyers, who can later serve as mentors and role models for other Latinas.<sup>84</sup>

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*



